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15 INTERNATIONAL

16 UNITED STATES BANKRUPTCY COURT  
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA

18 In re

19 GERALD ARMSTRONG,

20 Debtor

21 CHURCH OF SCIENTOLOGY  
22 INTERNATIONAL, a California not-  
23 for-profit religious corporation,

24 Creditor,

25 vs.

26 GERALD ARMSTRONG,

27 Debtor.

) CASE NO. 95-10911 aj

) CHAPTER 7

) Adversary Proceeding No.  
28 95-1164

) CHURCH OF SCIENTOLOGY  
) INTERNATIONAL'S MEMORANDUM  
) OF POINTS AND AUTHORITIES  
) IN SUPPORT OF MOTION FOR  
) PROTECTIVE ORDER, AND  
) REQUEST FOR SANCTIONS

) [F.R.C.P. 26, 37]

) DATE: October 13, 1995

) TIME: 11:00 a.m.

) CTRM: Hon. Alan Jaroslavsky

1 I. INTRODUCTION

2 On August 16, 1995, debtor Gerald Armstrong mailed to  
3 creditor Church of Scientology International a document entitled  
4 "Gerald Armstrong's First Inspection Demand to Plaintiff." [Ex. A  
5 to Bartilson Dec.] That "demand" seeks 144 categories of  
6 documents, and spans 37 pages. None of the requests are relevant  
7 to this proceeding: an adversary petition in which the creditor  
8 seeks to prevent Armstrong's discharge in bankruptcy due to  
9 fraud, and misrepresentations on his bankruptcy petition. In  
10 addition to being overbroad, burdensome, and intended to harass,  
11 the document production demand is premature: the parties have  
12 not yet had a meet and confer pursuant to Federal Rule of Civil  
13 Procedure Rule 26(f), and, absent that meet and confer, no party  
14 may commence discovery. F.R.C.P. 26(d).

15 When the Church's counsel asked Armstrong, pursuant to Rule  
16 26, to withdraw the demand until the meet and confer resulting in  
17 a discovery plan was completed, Armstrong refused. [Bartilson  
18 Dec., and Exhibit B thereto]

19 Accordingly, the Church seeks a protective order striking  
20 Armstrong's burdensome document request, and sanctioning  
21 Armstrong for his deliberate abuse of the discovery process.

22 II. THE CHURCH IS ENTITLED TO A PROTECTIVE ORDER STRIKING THE  
23 DOCUMENT REQUESTS

24 Federal Rules of Civil Procedure, Rule 26(d) provides in  
25 relevant part that, absent local modification,

26 . . . a party may not seek discovery from any source  
27 before the parties have met and conferred as required  
28 by subdivision (f).



1 In this case, no Rule 26 meeting of the parties has yet  
2 occurred. The purpose of such a meeting is to "discuss the  
3 nature and basis of their claims and defenses. . . and to develop  
4 a proposed discovery plan." Although there is presently a  
5 complaint on file, it is not possible yet to ascertain all of the  
6 matters at issue in the action concerning which discovery could  
7 be said to be necessary. Armstrong filed a 40-page answer  
8 consisting almost entirely of irrelevant allegations (as, for  
9 example, that his actions are directed by God, and the Church is  
10 "evil" and "neo-satanic"). Accordingly, the Church filed a  
11 motion to strike the answer, which is set for hearing on October  
12 6, 1995. Once the motion to strike is heard, and the answer  
13 either stricken or accepted, the parties will be in a better  
14 position to make a Rule 26 discovery plan.

15 Church counsel Laurie Bartilson sent a letter to Armstrong  
16 explaining Rule 26, and requesting that Armstrong withdraw his  
17 demand, and repropound it, if he wished, after the discovery plan  
18 was in place. [Ex. B to Bartilson Dec.] Armstrong's response was  
19 to refuse to withdraw the demand, and to intimate that he would  
20 do so only if Ms. Bartilson would withdraw the Church's pending  
21 motion to strike the answer. [Bartilson Dec., ¶ 3] However, Rule  
22 26 is clear. No discovery may be properly propounded by anyone  
23 until after the Rule 26(f) meeting has occurred. Armstrong's  
24 demand should, accordingly, be stricken.

25 Moreover, Rule 26 also provides that protective orders may  
26 issue, "to protect a party or person from annoyance,  
27 embarrassment, oppression, or undue burden or expense. . . ."  
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1 F.R.C.P. 26(c).

2 Here, Armstrong has posed a document request seeking scores  
3 of documents that have no possible relevance to the matters  
4 addressed in the complaint: his bankruptcy petition. He seeks,  
5 for example,

6 Each and every document provided or submitted by  
7 you at any time to the Internal Revenue Service in  
8 support of or concerning any and all applications for  
9 or in pursuit of your tax exempt status, including, but  
10 not limited to documents provided in or as part of any  
11 judicial or administrative proceeding concerning or  
12 relating to your application or applications for or in  
13 pursuit of your tax exempt status.

14 [Ex. A, #37] After the longest and most extensive investigation  
15 of any religious group in United States history, the IRS granted  
16 the Church of Scientology International and related Scientology  
17 churches tax exempt status in October, 1991. The submissions to  
18 the IRS by the Church would probably fill several rooms. They  
19 have absolutely no bearing on this litigation.

20 Requests like this fill Armstrong's 37 pages. See, e.g.,  
21 Request No. 5 (Minutes of Board meetings of any Scientology  
22 Church, from any year, which mention any of 12 persons, none of  
23 whom is Armstrong); No. 9 (All documents which Armstrong's  
24 lawyers were required by the terms of the 1986 settlement to  
25 return to the Church); No. 13 (All documents demonstrating legal  
26 or investigative fees paid by the Church since 1981); Nos. 43,  
27 44, 45, 46, 47, 48, 49, 50 (All documents which relate to or  
28 mention Armstrong's former attorneys, and/or attorneys who never  
represented Armstrong, but represented other parties in cases  
against Church entities, again involving perhaps entire rooms of  
litigation files, many of which are either privileged or under



1 seal); No. 53 (all documents concerning a host of individuals  
2 presently or formerly in litigation with the Church or related  
3 entities, again seeking privileged and sealed documents along  
4 with huge volumes of public records, all irrelevant); No. 88 (All  
5 documents "on which you base the assertion that you can brain  
6 wash faster than the Russians," a claim never made by the Church,  
7 and asserted by Armstrong only to harass); No. 133 (All documents  
8 concerning the Church's assets in December, 1986); No. 139 ("Each  
9 and every appellate opinion or decision published or unpublished  
10 in any appeal of any judgment decision or ruling in any case in  
11 which you are or were a party any time anywhere in the world.")).  
12 It should be emphasized that this is just a random sampling of  
13 Armstrong's document demand; the entire 144-count demand is just  
14 as overreaching, harassing, and irrelevant.

15 This is a blatant abuse of the discovery procedures.  
16 Particularly after Armstrong has been repeatedly warned by this  
17 Court not to file overly-long papers, and not to expand this  
18 litigation beyond its narrow confines, it is outrageous that  
19 Armstrong would pose such a lengthy, burdensome, and plainly  
20 irrelevant document demand. It is difficult to imagine a  
21 situation in which it would be more appropriate to issue a  
22 protective order than this one, to protect the Church from  
23 Armstrong's unnecessary, burdensome discovery. Armstrong's  
24 demand should be stricken.

25 **III. ARMSTRONG SHOULD BE SANCTIONED FOR THIS DISCOVERY ABUSE**

26 Federal Rules of Civil Procedure Rule 37(a)(4) provides that  
27 the Court shall sanction parties abusing discovery and requiring  
28



1 the other side to file a motion in order to protect its  
2 interests, including requiring the party to pay reasonable fees  
3 and costs incurred.

4 Here, Armstrong has blatantly violated Rule 26(d), and, even  
5 when counsel advised him of his error, refused to correct it.  
6 The document demand itself is also improper in its scope, and  
7 shows bad faith on its face. Armstrong should accordingly be  
8 sanctioned by this court, and ordered to pay the Church's  
9 reasonable fees and costs.

10 IV. CONCLUSION

11 Debtor Armstrong propounded a 144 item document demand to  
12 one of his creditors. He did so before he was authorized to  
13 propound any discovery by the Federal Rules of Civil Procedure,  
14 and he refused to withdraw the demand, necessitating this motion.  
15 Further, the demand itself is outrageous, seeking hundreds of  
16 thousands of documents having nothing whatsoever to do with  
17 Armstrong's bankruptcy. For all of these reasons, together with  
18 the reasons discussed above, this Court should issue a protective  
19 Order, striking the document demand and requiring debtor  
20 Armstrong to pay to the Church sanctions in the amount of \$840.

21 Dated: September 19, 1995 Respectfully submitted,

22 MOXON & BARTILSON

23  
24 By: LSI  
25 Laurie J. Bartilson

26 Andrew H. Wilson  
27 WILSON, RYAN & CAMPILONGO

28 Attorneys for Creditor  
CHURCH OF SCIENTOLOGY INTERNATIONAL



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[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

1 Executed on September 19, 1995, at Los Angeles,  
2 California.

3 [ ] \*\*(BY PERSONAL SERVICE) I delivered such  
4 envelopes by hand to the offices of the  
addressees.

5 Executed on \_\_\_\_\_, at Los Angeles, California.

6 [X] (State) I declare under penalty of the laws  
7 of the State of California that the above is true  
and correct.

8 [ ] (Federal) I declare that I am employed in the  
9 office of a member of the bar of this court at  
whose direction the service was made.

10 Abel E. Demura  
11 Print or Type Name

Abel E. Demura  
Signature

12 \* (By Mail, signature must be of person depositing  
13 envelope in mail slot, box or bag)

14 \*\* (For personal service signature must be that of  
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